No. 857

IN THE SUPREME COURT OF THE UNITED STATES

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JOHN F. DAVIS, CLERK

OTTO BURGDORF,

Petitioner,

vs.

STATE OF CALIFORNIA
ALAN CRANSTON, CONTROLLER
OF THE STATE OF CALIFORNIA,
DOES ONE THRU TWENTY,

Respondents.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI JUDGMENT OF APPELLATE COURT

OTTO BURGDORF
Route 2, Box 680
Woodland, California

In Prop. Persona, Petitioner

THOMAS C. LYNCH
Attorney General of California
DAN KAUFMANN
Assistant Attorney General
WALTER J. WIESNER
Deputy Attorney General

Counsel for Defendants

Steno Print and Mailing Service, Sacramento

THE SUPREME COURT

OF THE UNITED STATES

OTTO BURGDORF,	)
	)
Petitioner,	)
	)
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	)
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APPENDIX TO
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JUDGMENT OF APPELLATE COURT

A general demurrer to an amended complaint of appellant for a gasoline tax refund was sustained without leave to amend. It was sustained upon the ground that the complaint showed upon its face that the action was barred by special statutes of limitations. (Rev. & Tax. Code, Secs. 8148 and 8149.5.) The first of these sections provides than an action for a gasoline tax refund may be brought within 90 days

after the mailing of a notice of action upon the taxpayer's application for the refund. The latter section provides that a failure by the taxpayer to bring the action within the time limited constitutes a waiver of the claim.

On appeal plaintiff, appearing in propria persona, argues earnestly the merits of his application for the refund. It is beyond the jurisdiction of this court to hear that plea. The sole question before us is whether the action is barred by the statutes cited. We hold that it is.

Statutes of limitation, which are statutes of repose, are vital to the welfare of society and are within the jurisdictional power of the Legislature. (Scheas v. Robertson (1951) 38 Cal. 2d 119, 125.) It is not a judicial prerogative to nullify acts of the Legislature fixing periods of limitation on causes of action. (Fontana Land Co. v. Laughlin (1926) 199 Cal. 625, 636.) Of course, to withstand the challenge of a charge of unconstitutionality, the period allowed by statute must be reasonable. (Scheas v. Robertson, supra, at

p. 125; Wilson v. Iseminger, 185 U. S. 55 (46 L. Ed. 804); Vance v. Vance, 108 U. S. 514 (27 L. Ed. 808).)

A 90-day statute of limitations has been upheld. (Goncalves v. San Francisco Unified School Dist., 166 Cal. App. 2d 87; Young v. County of Ventura, 39 Cal. App. 2d 732.) In Winters v. State Board of Equal. (1949) 93 Cal. App. 2d 87, this court held that a 60-day statute of limitations upon an action for refund of motor vehicle transportation license tax was not unconstitutional under article XIII, section 15, of the California Constitution. (See also Pac. Gas etc. Co. v. State Board of Equal. (1955) 134 Cal. App. 2d 149.) We cannot hold that a 90-day period of limitations is unreasonable under the circumstances here.

Appellant refers to the general statutes of limitation in the Code of Civil Procedure and particularly to section 348 of that Code. But a general statute has no applicability when a later special statute covering the subject

matter explicitly has been enacted. (Ainsworth v. Bryant, 34 Cal. 2d 465, 471-472.)

The cases cited by appellant do not cover the only issue which is before this court and are not in point.

The judgment is affirmed.

Pierce, P. J.

We concur:

Friedman, J.

Regan, J.

CERTIFICATION OF NONPUBLICATION

This opinion does not require publication in the advance sheets or official reports under the standards provided by rule 976, California Rules of Court.

Pierce, P. J.

Friedman, J.

Regan, J.